

In the Matter of )  
 )  
 Amendment of Part 95 of the Commission's )  
 Rules Regarding General Mobile Radio Service )  
 License Eligibility )

## MEMORANDUM OPINION AND ORDER

**Adopted: October 9, 2003**

**Released: October 10, 2003**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

## I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we consider a Petition for Rule Making (Petition) filed on May 15, 2003, by Paul Amestoy, Alan Dixon, and Robert K. Leef (Petitioners).<sup>1</sup> Petitioners request that the Commission reconsider a decision it adopted in 1988<sup>2</sup> and amend its rules for the General Mobile Radio Service (GMRS)<sup>3</sup> to allow certain tax exempt organizations to be eligible to apply for a GMRS license.<sup>4</sup> Based on our review of the Petition, we conclude that issuance of a *Notice of Proposed Rule Making* and the commencement of a separate proceeding regarding this matter is not warranted. Petitioner's request has been considered previously and could fundamentally alter the nature of the service. Therefore, we deny the Petition.

## II. BACKGROUND

2. The GMRS, originally the Class A Citizens Band (CB) Radio Service, was authorized for use by individuals and entities who were not eligible for licenses in the public safety, industrial and business, and transportation radio services.<sup>5</sup> It is a short-distance two-way land mobile radio service available for communications that facilitate personal or business activities of licensees and their immediate family members.<sup>6</sup> The Commission designated exclusive use of eight pairs of channels at 462 MHz and 467 MHz to GMRS.<sup>7</sup> It also authorized seven channels at 462 MHz that GMRS licensees may

<sup>1</sup> See Paul Amestoy, Alan Dixon, and Robert K. Leef Petition for Rule Making, Amendment of 47 C.F.R. Part 95, Regarding GMRS license eligibility (filed May 15, 2003) (Petition). Informal comments supporting the Petition were filed by Topaz3, L.L.C., (Topaz3 Comments) and Thomas P. Currie (Currie Comments).

<sup>2</sup> See Amendment of Subparts A and E of Part 95 to Improve the General Mobile Radio Service (GMRS), *Report and Order*, 3 FCC Rcd. 6554 (1988) (*Report and Order*).

<sup>3</sup> 47 C.F.R. §§ 95.1 – 95.183.

<sup>4</sup> See Petition at 2-3.

<sup>5</sup> See Amendments to Part 19 of the Commission's Rules - Rules Governing Citizens Radio Service, *Notice of Proposed Rulemaking*, Docket No. 9119, 13 Fed. Reg. 4796-4798 (Aug. 19, 1948), and *Order*, Docket No. 9119, 14 Fed. Reg. 1596-1604 (Apr. 5, 1949).

<sup>6</sup> See 47 C.F.R. §§ 95.1(a), 95.181.

<sup>7</sup> See 47 C.F.R. § 95.29.

use only for simplex communications and share with the Family Radio Service (FRS).<sup>8</sup> GMRS licensees include individuals and non-individuals<sup>9</sup> licensed before July 31, 1987.

3. In 1988, the Commission adopted a *Report and Order* intended to make the GMRS more efficient and flexible for personal users and to discourage the proliferation of what are typically Business Radio Service uses of the GMRS.<sup>10</sup> To focus the usage of the very limited number of GMRS channels toward personal communications uses, the Commission adopted rule changes that limited eligibility for new GMRS system licenses to individuals.<sup>11</sup> An individual is eligible to obtain, renew, and modify a GMRS system license.<sup>12</sup> GMRS systems licensed to non-individuals before July 31, 1987, were grandfathered.<sup>13</sup> The Commission, however, only permitted these non-individual licensees to remain GMRS licensees and to continue using the GMRS frequencies as long as the licensee did not make a major modification<sup>14</sup> to their GMRS system.<sup>15</sup> The Commission also decided that grandfathered systems that made major modifications would have to become licensed under the Private Land Mobile Radio Service rules rather than the GMRS rules.<sup>16</sup>

4. In the *Report and Order*, the Commission considered whether it should allow public service organizations or 501(c)(3) organizations under the Internal Revenue Code, as an exception to the eligibility requirement, to obtain GMRS licenses.<sup>17</sup> It concluded that it could not grant such an exception without serious risk of compromising the newly adopted eligibility requirements.<sup>18</sup> The Commission

<sup>8</sup> *Id.*

<sup>9</sup> A non-individual is a partnership and each partner is eighteen years of age or older; a corporation; an association; a state, territorial, or local government unit; or a legal entity.

<sup>10</sup> See Amendment of Subparts A and E of Part 95 to Improve the General Mobile Radio Service (GMRS), *Report and Order*, 3 FCC Rcd. 6554 (1988) (*Report and Order*).

<sup>11</sup> See *Report and Order*, 3 FCC Rcd. 6556 ¶ 13.

<sup>12</sup> See 47 C.F.R. § 95.5.

<sup>13</sup> See *Report and Order*, 3 FCC Rcd. 6556 ¶ 16.

<sup>14</sup> See *Report and Order*, 3 FCC Rcd. 6562 ¶ 69-70. When the Commission adopted the *Report and Order*, it defined a major modification as including any of the follow: (1) Change the area of operation of the GMRS system; (2) Add any stations to the GMRS system; (3) Increase the number of units of the mobile station; (4) Change the location of any land station in the GMRS system; (5) Add one or more channels or channel pairs and/or change the assigned channel(s) or channel pair(s); (6) Increase the transmitter power of a station in the GMRS system; or (7) Increase the height of a station antenna in the GMRS system. 47 C.F.R. § 95.71(e) (1989). The Commission later deleted 47 C.F.R. § 95.71 as part of a rulemaking that consolidated its licensing rules into a single set of rules for all services administered by the Wireless Telecommunications Bureau. See Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, 13 FCC Rcd. 21,027 (1998). Today, 47 C.F.R. § 1.929(a), classifies the following actions as “major” for all stations in all Wireless Radio Services: (1) Application for initial authorization; (2) Any substantial change in ownership or control, including requests for partitioning and disaggregation; (3) Application for renewal of authorization; (4) Application or amendment requesting authorization for a facility that would have a significant environmental effect, as defined by 47 C.F.R. §§ 1.1301 through 1.1319; (5) Application or amendment requiring frequency coordination pursuant to the Commission’s rules or international treaty or agreement; (6) Application or amendment requesting to add a frequency or frequency block for which the applicant is not currently authorized, excluding removing a frequency. Although 47 C.F.R. § 1.929(a) includes applications for renewal of authorization in the list of major actions, renewal applications would not constitute a “major change” for purposes of applying the *Report and Order*.

<sup>15</sup> See *Report and Order*, 3 FCC Rcd. 6556 ¶ 16.

<sup>16</sup> *Id.*

<sup>17</sup> See *Report and Order*, 3 FCC Rcd. 6555 ¶ 12.

<sup>18</sup> See *Report and Order*, 3 FCC Rcd. 6556 ¶ 19.

noted that even strict screening of applications would not prevent licensing of organizations which purported to have some apparent public service function, but which were formed for the real purpose of providing communications to commercial entities no longer eligible under the rules.<sup>19</sup> The Commission also stated that there is nothing inherent in tax exempt status that uniquely qualifies or recommends an entity with such status for special licensing consideration in the GMRS.<sup>20</sup> The Commission also noted that public service organizations should be able to operate as they do now with each of their individual members licensed for their own GMRS systems.<sup>21</sup>

5. On May 15, 2003, Petitioners filed a petition for rule making requesting that the Commission reconsider its ruling that organizations are not eligible for licensing in the GMRS.<sup>22</sup> They note that organizations classified as 501(c)(3) non-profit public service organizations are ineligible to apply for a GMRS license that would cover all their members because such organizations are not individuals.<sup>23</sup> Petitioners state that allowing 501(c)(3) organizations to be eligible for licenses in the GMRS would be consistent with the request of the President and many others that citizens take part in volunteerism and homeland security, Citizens Corp, REACT, and neighborhood watch, and would reduce the expense of volunteers that participate in organizations.<sup>24</sup> In addition, Petitioners note that GMRS can be used to satisfy a need for interoperability<sup>25</sup> and that GMRS has a demonstrated unique ability to communicate with FRS units in common use by the public due to its ability to pass information up and down the radio network to and from FRS units.<sup>26</sup> Petitioners request amendment of the GMRS rules to allow local chapters of parent non-profit 501(c)(3) organizations involved in safety communications and 501(c)(3) parent non-profit organizations founded prior to September 11, 2002, to obtain a GMRS license, and to allow grandfathered organizations, upon request, to transmit on all GMRS frequencies.<sup>27</sup>

### III. DISCUSSION

6. After review of the Petition, we note that the requested rule revisions have been considered before.<sup>28</sup> When the Commission revised the license eligibility rules for the GMRS, it concluded that it could not create an exception for 501(c)(3) organizations because there was nothing inherent in tax exempt status that uniquely qualified or recommended such entities for special licensing

<sup>19</sup> See *Report and Order*, 3 FCC Rcd. 6556 ¶ 20.

<sup>20</sup> *Id.*

<sup>21</sup> See *Report and Order*, 3 FCC Rcd. 6556 ¶ 19.

<sup>22</sup> Petition at 2.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> The term "interoperability" as we have defined it refers to an essential communications link within public safety and public service wireless communications systems which permits units from two or more different entities to interact with one another and to exchange information according to a prescribed method in order to achieve predictable results. See *In the Matter of the Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements For Priority Access Service*, WT Docket No. 96-86, *Second Notice of Proposed Rulemaking*, 12 FCC Rcd 17706, 17114 ¶ 14 (1997) (defining interoperability needs); *First Report and Order and Third Notice of Proposed Rulemaking*, 14 FCC Rcd 152 (1998) (designating 2.6 megahertz of spectrum in the 700 MHz band for interoperability purposes e.g., the ability of different governmental agencies to communicate across jurisdictions and with each other.)

<sup>26</sup> Petition at 2.

<sup>27</sup> *Id.* at 3.

<sup>28</sup> See *Report and Order*, 3 FCC Rcd. 6556 ¶ 20.

consideration in the GMRS.<sup>29</sup> Petitioners have not shown that this conclusion is not valid or that there is any uniqueness sufficient to justify an exception to the eligibility rules for only the subset of 501(c)(3) and grandfathered organizations they suggest. Rather, Petitioners appear to object to the Commission's decision not to create an exception for 501(c)(3) organizations.

7. With regard to the Petitioner's claim that citizens have been requested to take part in volunteerism and homeland security, we are not persuaded that general requests that individuals become more involved in such activities is a sufficient reason to propose revising the eligibility standards for licensing in a particular radio service. In this regard, we note that communication services such as FRS, the Multi-Use Radio Service,<sup>30</sup> and optional features in cellular radio systems are readily available and may be used to satisfy the communication needs of individuals participating in volunteer and community activities. We also note that organizations such as Citizens Corp, REACT, and neighborhood watch may use any of a number of different communications services to satisfy their communications needs. Volunteers participating in public service activities may operate as a team, group, or organization on GMRS channels if each member has a GMRS license.<sup>31</sup> If licensing is too expensive for organization members, services that do not require licensing are available. The decision as to which communications service the organization uses is within its discretion. The Petitioners have not shown that the Commission's conclusion that these organizations should be able to operate as they do now is incorrect or that the licensing fees for GMRS have discouraged individuals from participating in REACT, neighborhood watch teams, and other volunteer groups. With regard to those organizations that have a GMRS license that is grandfathered, we note that individuals who choose not to obtain their own GMRS license may still communicate with organization members if the organization transmits messages on any of the seven GMRS/FRS shared channels.

8. We also believe that the requested revisions are inconsistent with the purpose of the GMRS because the revisions, if adopted, would result in the use of GMRS again for communications by entities eligible for licensing in business and other radio services. In this regard, we note that the purpose of the GMRS is to provide a short-distance communication service for individuals rather than businesses and organizations.<sup>32</sup> Additionally, we are concerned that if Section 95.5 of the Commission's Rules were revised to allow the licensing of organizations and expanded use by grandfathered businesses as Petitioners request, the GMRS would be more heavily used for business-related communications. This result, we believe, would transform GMRS again from a personal use-oriented communications service to a business radio service used as an alternative to the Private Land Mobile Radio Services. Such a transformation could fundamentally change the nature of the GMRS and reduce its usefulness for personal communications. It also would be contrary to the Commission's stated intention of not allowing the GMRS to become the "other" Business Radio Service.<sup>33</sup> The Petition presents no compelling reason for commencing a rule making proposing rule changes that would undermine the underlying purpose for establishing the GMRS. Rather, we believe that organizations wishing to obtain a license that covers all of its members should seek a license in an appropriate service or use bands that are expressly allocated for use on a licensed-by-rule basis.

9. With regard to the Petitioner's request that the Commission reconsider its ruling that organizations are not eligible for licensing in the GMRS, we note that the Commission's rules required

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<sup>29</sup> *Id.*

<sup>30</sup> See 47 C.F.R. §§ 95.1301 – 95.1309.

<sup>31</sup> See *Report and Order*, 3 FCC Rcd. 6556 ¶ 21.

<sup>32</sup> See *Report and Order*, 3 FCC Rcd. 6556 ¶ 13.

<sup>33</sup> See *Report and Order*, 3 FCC Rcd. 6556 ¶ 16.

that petitions for reconsideration be filed within thirty days of public notice of the *Report and Order*.<sup>34</sup> Because more than thirty days from public notice has lapsed, the request that we reconsider the *Report and Order* is an untimely request for reconsideration.

#### IV. CONCLUSION AND ORDERING CLAUSES

10. In light of the foregoing, we conclude that Petitioners have not demonstrated that any changes to the Commission's Rules are warranted at this time. The Petition fails to sufficiently demonstrate that the proposed rule changes would further the public interest and how the general public would significantly benefit from such rule changes. Additionally, the Petition is an untimely request for reconsideration of a previous Commission decision. Consequently, we deny the Petition.

11. ACCORDINGLY, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.401(e) of the Commission's Rules, 47 C.F.R. § 1.401(e), the Petition for Rule Making filed by Paul Amestoy, Alan Dixon, and Robert K. Leef IS DENIED.

12. This action is taken pursuant to delegated authority granted under the provisions of Sections 0.131(a) and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131(a), 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
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<sup>34</sup> See 47 C.F.R. § 1.429(d) (1988).